

Message Text

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PAGE 01 STATE 178220
ORIGIN L-03

INFO OCT-01 EA-07 ISO-00 AF-10 EB-08 COME-00 /029 R

DRAFTED BY L/EA:PMNORTON:MAD

APPROVED BY L/EA:EGVERVILLE

EA/PHL - MR. FLECK

AF/JAG - W.H. CARROLL

NAVY/JAG - D. PFEIFFER

JUSTICE - MR. RISTAU

DOD/ISA - CMDR. JULIAN

-----008138 292155Z /75

R 291800Z JUL 77

FM SECSTATE WASHDC

TO AMEMBASSY MANILA

INFO DEPT OF JUSTICE

CSAF JACK

CINCPAC

CINCPACAF

CINCPACFLT

CINCPACREPPHIL

13AF JA

3CSF JAI

NAVY JAG

AF JAG

DOD ISA

C O N F I D E N T I A L STATE 178220

E.O. 11652: N/A

TAGS: ACLM

SUBJECT: ASIAN DESIGN & CONSTRUCTION COMPANY VS U.S. ET AL

REFS: (A) MANILA 11448; (B) 3CSG/JAI MSG DTG 132322Z

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1. DEPARTMENT, DOD, AND JUSTICE CONCUR IN RECOMMENDATION
THAT PRIVATE LAW FIRM BE RETAINED IN THIS CASE. JUSTICE
IS SENDING A LETTER TO THE LUNA FIRM AUTHORIZING ITS
REPRESENTATION OF USG IN THIS MATTER.

2. USG FOLLOWS THE SO-CALLED RESTRICTIVE THEORY OF

SOVEREIGN IMMUNITY NOW EMBODIED IN THE FOREIGN SOVEREIGN IMMUNITIES ACT. UNDER THIS THEORY COMMERCIAL ACTIVITIES ARE NOT ENTITLED TO IMMUNITY. WHETHER A PARTICULAR ACTIVITY IS QUOTE COMMERCIAL UNQUOTE OR NOT IS DETERMINED BY REFERENCE TO THE NATURE OF THE ACTIVITY ITSELF, RATHER THAN BY THE PURPOSES IT ULTIMATELY SERVES. FOR EXAMPLE, A U.S. MILITARY CONTRACT TO PURCHASE A COMMODITY IS CLEARLY COMMERCIAL IN NATURE EVEN THOUGH IT SERVES A MILITARY, AND HENCE GOVERNMENTAL, PURPOSE.

3. BY THESE STANDARDS, ASSERTION OF SOVEREIGN IMMUNITY IN ASIAN DESIGN CASE IS NOT REPEAT NOT APPROPRIATE AND IS NOT REPEAT NOT AUTHORIZED.

4. OTHER DEFENSES SUGGESTED IN REF B WOULD SEEM APPROPRIATE FOR ASSERTION IN COURT. IN PARTICULAR, THE CONTRACT IN QUESTION PRESUMABLY HAD A STANDARD DISPUTES CLAUSE, AND FAILURE TO EXHAUST THE ADMINISTRATIVE REMEDIES THEREUNDER CAN BE PLEADED. WE UNDERSTAND PHILIPPINE SUPREME COURT HAS UPHELD THIS DEFENSE IN AT LEAST ONE PREVIOUS CASE. VANCE

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Message Attributes

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Decaption Note:
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
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